

**FUNERAL DIRECTORS EXAMINING BOARD MEETING
MINUTES
May 13, 2003**

PRESENT: Bonnie Gift, J.C. Frazier, Roy Pfeffer, Rick Unbehaun

STAFF PRESENT: Patricia Hoeft, Division Administrator; Roxanne Peterson, Direct Licensing Coordinator; Jacquelynn Rothstein, Legal Counsel; Division of Enforcement staff were present for portions of the meeting.

GUESTS: Erin Longmire, Funeral Service Alliance of Wisconsin (FSA)
Mark Paget, Wisconsin Funeral Directors Association (WFDA)
Mark Lipscomb, Wisconsin Burial Vault Association

CALL TO ORDER

Roy Pfeffer, Chair, called the meeting to order at 9:30 a.m. A quorum of 4 members was present.

The Board welcomed J.C. Frazier who was appointed as a professional member replacing William Cress.

The Board welcomed Secretary Donsia Strong Hill and Division Administrators, Patty Hoeft, Cathy Pond, Cris Selin and Sandy Rowe.

AGENDA

Additions to the agenda:

- Introduction of Administrative Staff
- Public Comments
- Stipulations re: Schauer & Schumacher Funeral Home and Cremation Services, Lendman, Mischler Funeral Home and Skubal-Slattey Funeral Home

MOTION: Bonnie Gift moved, seconded by Rick Unbehaun, to approve the agenda as amended. Motion carried unanimously.

ELECTION OF OFFICERS

MOTION: Bonnie Gift moved, seconded by Rick Unbehaun, to nominate and elect Roy Pfeffer as Chair. Motion carried unanimously.

MOTION: Bonnie Gift moved, seconded by J.C. Frazier, to nominate and elect Rick Unbehaun as Vice Chair. Motion carried unanimously.

MOTION: Roy Pfeffer moved, seconded by J.C. Frazier, to nominate and elect Bonnie Gift as Secretary. Motion carried unanimously.

APPROVAL OF MINUTES (11/13/02)

MOTION: J.C. Frazier moved, seconded by Rick Unbehaun, to approve the minutes as written. Motion carried unanimously.

ADMINISTRATIVE REPORT

Patty Hoeft, Division Administrator, and Roxanne Peterson, Direct Licensing Coordinator

Board Roster – Noted.

Meeting Dates for 2002 and 2003 - Noted. Rick Unbehaun will not be available for the next meeting, July 15, 2003.

To-Do List - The To-Do List was reviewed and all items had been completed.

Out-of-State Travel Policy - Roxanne Peterson explained the current out-of-state travel policy and reported that the Department is reviewing its current policy as it will relate to travel plans for Fiscal Year 2004.

Division of Enforcement Statistics – The Board reviewed a memo from Jack Temby relating to complaint statistics for the funeral director and cemetery professions.

Board Appointments - Roxanne Peterson reported that the Department is in continual contact with the Governor's office regarding appointments to various Boards. The Governor is in the process of appointing several unfilled positions.

Summary Reports on Pending Court Cases, Disciplinary Cases and Administrative Rules - Noted.

To-Pass Folder - The To-Pass Folder was circulated to the Board members.

CONTINUING EDUCATION ISSUES

Barbara Showers and Lydia Bridge, Office of Examinations, met with the Board to discuss whether to allow the pre-need agent courses to satisfy credits for funeral director continuing education requirements.

Barb Showers reported that 3 of the 4 pre-need agent courses do include subjects related to funeral directors: (a) grief counseling or communication, (b) professional conduct, business

ethics or legal aspects specifically related to practice in the profession; and, (c) business management concepts relating specifically to delivery of services to a consumer. The only subject not included in the pre-need agent courses is “technical or practical aspects of the profession”, i.e., embalming.

Jacquelynn Rothstein advised that the funeral director statutes and administrative rules do not allow the Board to analyze the course content as to the level of difficulty; nor does it address the number of times a licensee could take the course.

MOTION: Bonnie Gift moved, seconded by J.C. Frazier, to appoint Rick Unbehaun as the Board’s Continuing Education Liaison to work with the Office of Examinations on this issue and any future continuing education matters. Motion carried unanimously.

EXAMINATION ISSUES

Nothing to discuss.

CERTIFICATES IN GOOD STANDING

Judy Mender, Division of Credentialing, met with the Board to discuss Certificates in Good Standing. Ms. Mender reported that there are currently 39 Certificates in Good Standing.

The Board received copies of the forms, “Procedures for Reinstating a License Expired More Than 5 Years” and “2003 Examination Schedule”, which are sent out with the renewals.

MOTION: Rick Unbehaun moved, seconded by J.C. Frazier, to approve the Certificate in Good Standing forms, retaining the same content as before; and, that the forms be sent to persons contacting the Department inquiring about Certificates in Good Standing and to renewal applicants. Motion carried unanimously.

LEGISLATIVE UPDATE

Regulation of Crematories – LRB 2804/P4

The Board discussed proposed legislation relating to the cremation of human remains and creating a Crematory Authority Council consisting of 3 persons licensed as funeral directors who operate crematories; 3 representatives of cemetery authorities who operate crematories; and, one public member.

At the November 13, 2003, Board meeting, the Board authorized Roy Pfeffer as the contact person on this proposal and that former Board member Daniel Densow should be listed as an additional contact.

MOTION: Bonnie Gift moved, seconded by Rick Unbehaun, that Jacquelynn Rothstein review proposed s. 440.82, Stats., concerning exemptions from liability; and, report to the Board at the next meeting. Motion carried unanimously.

MOTION: Bonnie Gift moved, seconded by Rick Unbehaun, that Jacquelynn Rothstein review the proposed cremation legislation and the Uniform Anatomical Give Act (s. 157.06, Stats.) to determine what, if any, comparisons there are with respect to a family's right to negate the wishes of the donor. Motion carried unanimously.

FUNERAL DIRECTOR-IN-CHARGE

Jacquelynn Rothstein reported that the funeral establishment renewal is in progress and there appears to be a situation where some funeral establishments are identifying a funeral director-in-charge as being in charge of more than one funeral home, thus being in violation of the Statutes.

The Board reviewed its long-standing position, based upon s. 445.105(2), Stats., that a funeral director-in-charge cannot be in charge of more than one funeral home. It also discussed some possible alternatives which would require a statutory change.

The Wisconsin Funeral Directors Association and the Funeral Service Alliance representatives advised that they are jointly drafting a proposal that would allow for a funeral director-in-charge to operate at more than one location, under certain circumstances. The Board complimented the associations for working together on this issue and advised it looks forward to seeing the draft language.

MOTION: Rick Unbehaun moved, seconded by Bonnie Gift, to affirm its past interpretation of the current law that each funeral establishment has in charge, full time, a licensed funeral director; and, that one funeral director cannot be named as the funeral director-in-charge of more than one funeral establishment. Motion carried unanimously.

MOTION: Rick Unbehaun moved, seconded by Bonnie Gift, that the Department send a letter to those funeral establishments in violation of the current law, advising them of the Board's interpretation and allowing them 30 days to come into compliance of the law. Motion carried unanimously.

BOARD MEMBER ACTIVITY

Board members gave brief reports on activities undertaken since the last meeting.

PRACTICE QUESTIONS

Embalming in Places Other Than a Licensed Funeral Home

Question: Can embalming be done at places other than a licensed funeral home?

Jacquelynn Rothstein advised that s. HFS 136.03 (2), Wis. Admin. Code, lists 3 additional locations where embalming can be done: hospitals, facilities approved by a local medical examiner or coroner if a disaster occurs, and private homes of decedents or the home of a relative of a decedent. The Board noted that mortuary and medical schools are not included in the list.

MOTION: Rick Unbehaun moved, seconded by J.C. Frazier, that Jacquelynn Rothstein contact the Department of Health and Family Services in an effort to have them amended HFS 136.03(2) to include medical and mortuary schools. Motion carried unanimously.

Charges for Cash Advances

Question: Can a funeral home charge more for a cash advance item than what it actually costs the funeral home?

Jacquelynn Rothstein noted that the Federal Trade Commission Funeral Industry Practices Rule addresses this issue under 16 CFR s. 453.3(f). Since the Board has adopted the FTC rules, a funeral director would have to provide specific disclosures should the funeral director wish to charge more for cash advance items than what it costs the funeral home to purchase them.

MOTION: J.C. Frazier moved, seconded by Bonnie Gift, that the Board agrees with Jacquelynn Rothstein's interpretation of the law and that she respond to the requestor of the information. Motion carried unanimously.

"Anti-Combo" Law

Scenario: A private company, not owned by a funeral home or by a funeral director, purchases cemetery property. With the cemetery's permission, the company erects a small structure on the property consisting of multiple niches for remains and then asks a local funeral home to help sell or arrange the sale of the niches owned by the private company. In turn, the private company reimburses the funeral home for its efforts.

Jacquelynn Rothstein advised that s. 445.12, (6), Stats., prohibits funeral homes from directly or indirectly receiving a benefit of any kind from a cemetery or from an agent of a cemetery in connection with a burial privilege. This section also prohibits funeral homes from acting as brokers of any cemetery property or any interest in it.

Therefore, under the proposed arrangement identified above, it appears as if a funeral home would be indirectly receiving a benefit from the cemetery through the sales of these niches. It also appears that it would be receiving a benefit from an agent of the cemetery via these sales and that the funeral home would indirectly be operating as a broker for an interest in cemetery property. Participating in this proposed arrangement appears to be in violation of s. 445.12(6), Stats.

MOTION: J.C. Frazier moved, seconded by Bonnie Gift, that the Board agrees Jacquelynn Rothstein's interpretation of the law and that she respond to WFDA. Motion carried unanimously.

Memorial Centers

Question: Whether "memorial centers" are funeral establishments as defined by s. 445.01(6), Stats., and therefore subject to licensure.

The Board discussed the fact that many previously licensed funeral establishments have removed their preparation rooms from the establishment as well as the term "funeral home" from their signs, advertisements, and stationary and are now known as "memorial centers". As a result, these facilities are now known as "memorial centers" in which funerals/visitations are held, and where preneed and at-need arrangements are made.

Jacquelynn Rothstein advised that based on ss. 445.04(1) and 445.01(6), Stats., and FD 2.02, FD 2.02(1), and 2.03, Wis. Admin. Code, the business of a funeral director should be conducted solely within the confines of a funeral establishment.

The Wisconsin Funeral Directors Association and the Funeral Director Alliance representatives advised that they are working jointly to prepare legislation that would incorporate "memorial centers" under some umbrella of license.

MOTION: Rick Unbehaun moved, seconded by Bonnie Gift, that the Board is leaning towards the concept of what the Association and Alliance are drafting and to table discussion of this issue until the Board has a chance to review the Association and Alliance proposed draft. Motion carried unanimously.

Rights of Donors

Question: Whether the provisions in the cremation proposal are in conflict with the Uniform Anatomical Gift Act.

This issue was discussed earlier in the meeting under Legislation. The following motion was passed at that time.

MOTION: Bonnie Gift moved, seconded by Rick Unbehaun, that Jacquelynn Rothstein review the proposed cremation legislation and the Uniform Anatomical Gift Act (s. 157.06, Stats.) to determine what, if any, comparisons there are with respect to a family's right to negate the wishes of the donor. Motion carried unanimously.

Funeral Director's Presence

Question: Whether a funeral director needs to be present at a funeral or memorial service.

Jacquelynn Rothstein advised that, pursuant to ss. FD 2.02(2) and FD 2.03, Wis. Admin. Code, if a funeral or memorial service is being conducted on behalf of a licensed funeral establishment, then the attendance of a licensed director would be required. If, however, the services are not being conducted on behalf of the funeral home, then a licensed funeral director would not be required.

Question: Whether a licensed Wisconsin funeral director need to meet a funeral director from another state when the out-of-state director is transporting a body directly to a cemetery.

Jacquelynn Rothstein advised that pursuant to s. 69.18(1)(a), Stats., if a decedent is being moved by an out-of-state funeral director for the purpose of final disposition, then that funeral director must do so through the agency of another funeral director licensed under Ch. 445, Stats. As a practical matter, the out-of-state funeral director would therefore have to make special arrangements to act through a licensed Wisconsin funeral director in order to facilitate such transportation.

Cemetery Involvement in Conducting Funeral Service

The Board questioned what a cemetery can do legally in conducting funeral services and whether the family can delegate a cemeterian to do the service.

MOTION: Rick Unbehaun moved, seconded by J.C. Frazier, to table this item until the next meeting and ask that Jacquelynn Rothstein research this issue for an opinion. Motion carried unanimously.

MISCELLANEOUS CORRESPONDENCE/INFORMATION

Nothing to report.

NEW BUSINESS

Nothing to discuss.

PUBLIC COMMENTS

None, in addition to those already made.

CLOSED SESSION

MOTION: Rick Unbehaun moved, seconded by Bonnie Gift, to convene to closed session to deliberate on cases following hearing (s. 19.85(1)(a), Stats.; to consider licensure or discipline (s. 19.85(1)(b), Stats.; to consider individual histories or disciplinary data (s. 19.85 (1)(f), Stats.; and, to confer with legal counsel (s. 19.85(1)(g), Stats. Roll Call Vote: Rick Unbehaun-yes; J.C. Frazier-yes; Bonnie Gift-yes; Roy Pfeffer-yes. Motion carried unanimously.

Open Session recessed at 12:30 p.m. and the Closed Session began at 12:35 p.m.

The Board deliberated on the Monitoring Report, the Case Status Report and Case Closings, Proposed Stipulations, and Proposed Administrative Warnings.

J.C. Frazier was not present during the discussion under Case Closings for cases 02 FDR 018 and 03 FDR 001.

RECONVENE TO OPEN SESSION

MOTION: Bonnie Gift moved, seconded by J.C. Frazier, to reconvene into open session at 2:15 p.m. Motion carried unanimously.

VOTE ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION

MONITORING REPORT

Todd Mann – Request For Stay of Suspension

MOTION: Rick Unbehaun moved, seconded by J.C. Frazier, to grant a 4-month stay of suspension and that the next request date for a stay will be August 15, 2003. Motion carried unanimously.

CASE CLOSINGS

MOTION: Rick Unbehaun moved, seconded by Bonnie Gift, to close case 01 FDR 013 for no violation. Motion carried unanimously.

- MOTION:** Rick Unbehaun moved, seconded by Bonnie Gift, to close case 02 FDR 018 for insufficient evidence. Motion carried unanimously. J.C. Frazier left the room for discussion and abstained from voting on this matter.
- MOTION:** Rick Unbehaun moved, seconded by Bonnie Gift, to close case 03 FDR 001 for insufficient evidence. Motion carried unanimously. J.C. Frazier left the room for discussion and abstained from voting on this matter.
- MOTION:** Bonnie Gift moved, seconded by Rick Unbehaun, to refer 03 FDR 001 to the Division of Enforcement and request that this case be referred back to DOE for investigation relating to the regulation of cemeteries. Motion carried unanimously. J.C. Frazier left the room for discussion and abstained from voting on this matter.
- MOTION:** Rick Unbehaun moved, seconded by Bonnie Gift, to close case 02 FDR 35 for no violation. Motion carried unanimously.
- MOTION:** Rick Unbehaun moved, seconded by J.C. Frazier, to close case 03 FDR 007 for no violation. Motion carried unanimously.

ADMINISTRATIVE WARNING

02 FDR 035

- MOTION:** Rick Unbehaun moved, seconded by Bonnie Gift, to accept the administrative warning for case 02 FDR 035. Motion carried unanimously.

STIPULATIONS

Molten-Bell & Son Funeral Home (South Milwaukee)
Schauer & Schumacher Funeral Home and Cremation Services (Green Bay)
Lendman Mischler Funeral Home (Kenosha)
Skubal-Slattey Funeral Home (West Allis)

- MOTION:** Rick Unbehaun moved, seconded by J.C. Frazier, to accept the Stipulations, Final Decisions and Orders. Motion carried unanimously. Roy Pfeffer was Board Advisor.

Edna C. Beason Banks, d/b/a Banks Funeral Home (Milwaukee)

- MOTION:** J.C. Frazier moved, seconded by Bonnie Gift, to accept the Stipulation, Final Decision and Order. Motion carried unanimously. Roy Pfeffer was Board Advisor.

David W. Wachholz, Gianna M. Wachholz, Herbert G. Wachholz, Jr., David J. Tabbert, and Wachholz-Krause Funeral Home, Inc. (Markesan, Ripon and Montello)

MOTION: Rick Unbehaun moved, seconded by J.C. Frazier, to accept the Stipulation, Final Decision and Order. Motion carried unanimously. Rick Unbehaun was Board Advisor.

Scott F. Schroeder (Cudahy)

MOTION: Rick Unbehaun moved, seconded by J.C. Frazier, to accept the Stipulation, Final Decision and Order. Motion carried unanimously. Roy Pfeffer was Board Advisor.

Robert A. Anderson (Hayward)

MOTION: Rick Unbehaun moved, seconded by J.C. Frazier, to accept the Stipulation, Final Decision and Order. Motion carried unanimously. Roy Pfeffer was Board Advisor.

John B. Klemmer, d/b/a Heritage New Berlin Funeral Home (New Berlin)

MOTION: J.C. Frazier moved, seconded by Bonnie Gift, to accept the Stipulation, Final Decision and Order. Motion carried unanimously. Rick Unbehaun was Board Advisor.

Charlane Richardson, Angelus Funeral Home (Milwaukee)

MOTION: Rick Unbehaun moved, seconded by J.C. Frazier, to accept the Stipulation, Final Decision and Order. Motion carried unanimously. Roy Pfeffer was Board Advisor.

ADJOURNMENT

MOTION: Bonnie Gift moved, seconded by Rick Unbehaun, to adjourn the meeting at 2:25 p.m. Motion carried unanimously.